

AMENDED IN SENATE JUNE 25, 2013

AMENDED IN SENATE JUNE 14, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 868**

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**Introduced by Assembly Member Ammiano**  
(Principal coauthors: Senators Corbett and Leno)

February 21, 2013

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An act to amend Section 68553 of the Government Code, and to amend Sections 102, 304.7, and 317 of the Welfare and Institutions Code, relating to courts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 868, as amended, Ammiano. Courts: training programs: gender identity and sexual orientation.

(1) Existing law requires the Judicial Council to perform various duties designed to assist the judiciary, including establishing judicial training programs for judges, referees, commissioners, mediators, and others who perform duties in family law matters. Existing law requires this training to include instruction in all aspects of family law, including the effects of gender on family law proceedings.

This bill would require that training to also include the effects of gender identity and sexual orientation on family law proceedings.

(2) Existing law establishes the jurisdiction of the juvenile court, which is authorized to adjudge certain children to be dependents of the court under certain circumstances, and prescribes various hearings and other procedures for these purposes. Existing law requires a court to appoint counsel for a child who is not represented by counsel in these dependency proceedings, except as specified. Under existing law,

appointed counsel is required to have a caseload and training that ensures adequate representation, and Judicial Council is required to promulgate rules of court that establish caseload standards, training requirements, and guidelines for counsel.

This bill would require that training to also include instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth.

(3) Existing law requires the Judicial Council to establish a planning and advisory group to recommend on the development of program guidelines and funding procedures for court-appointed special advocates (CASAs) and to establish a request-for-proposal process to establish, maintain, or expand local CASA programs, pursuant to which volunteer CASAs provide designated services and support to children under the jurisdiction of the juvenile court. The council is required to, among other things, require an initial and ongoing training program for all persons acting as a CASA that covers various topics, including, but not limited to, child development.

This bill would require that training to also include cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender (LGBT) youth.

(4) Existing law requires the Judicial Council to develop and implement standards for the education and training of all judges who conduct dependency hearings.

This bill would require that training to include instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 68553 of the Government Code is
- 2 amended to read:
- 3 68553. (a) The Judicial Council shall establish judicial training
- 4 programs for judges, referees, commissioners, mediators, and
- 5 others who are deemed appropriate who perform duties in family
- 6 law matters.
- 7 (b) The training shall include a family law session in any
- 8 orientation session conducted for newly appointed or elected judges
- 9 and an annual training session in family law.

1 (c) The training shall include instruction in all aspects of family  
2 law, including effects of gender, gender identity, and sexual  
3 orientation on family law proceedings, the economic effects of  
4 dissolution on the involved parties, and, on and after July 1, 1994,  
5 the effects of allegations of child abuse or neglect made during  
6 family law proceedings.

7 SEC. 2. Section 102 of the Welfare and Institutions Code is  
8 amended to read:

9 102. (a) Each CASA program shall, if feasible, be staffed by  
10 a minimum of one paid administrator. The staff shall be directly  
11 accountable to the presiding juvenile court judge and the CASA  
12 program board of directors, as applicable.

13 (b) The program shall provide for volunteers to serve as CASAs.  
14 A CASA may be appointed in juvenile dependency proceedings  
15 under Section 300, including proceedings involving a nonminor  
16 dependent.

17 (c) Each CASA shall serve at the pleasure of the court having  
18 jurisdiction over the proceedings in which a CASA has been  
19 appointed and that appointment may continue after the child attains  
20 his or her age of majority, with the consent of the nonminor  
21 dependent. A CASA shall do all of the following:

22 (1) Provide independent, factual information to the court  
23 regarding the cases to which he or she is appointed.

24 (2) Represent the best interests of the child involved, and  
25 consider the best interests of the family, in the cases to which he  
26 or she is appointed.

27 (3) At the request of the judge, monitor cases to which he or  
28 she has been appointed to ensure that the court's orders have been  
29 fulfilled.

30 (d) The Judicial Council, through its rules and regulations, shall  
31 require an initial and ongoing training program consistent with  
32 this chapter for all persons acting as a CASA, including, but not  
33 limited to, each of the following:

34 (1) Dynamics of child abuse and neglect.

35 (2) Court structure, including juvenile court laws regarding  
36 dependency.

37 (3) Social service systems.

38 (4) Child development.

1 (5) Cultural competency and sensitivity relating to, and best  
2 practices for, providing adequate care to lesbian, gay, bisexual,  
3 and transgender youth.

4 (6) Interviewing techniques.

5 (7) Report writing.

6 (8) Roles and responsibilities of a CASA.

7 (9) Rules of evidence and discovery procedures.

8 (10) Problems associated with verifying reports.

9 (e) The Judicial Council, through its CASA Advisory  
10 Committee, shall adopt guidelines for the screening of CASA  
11 volunteers, which shall include personal interviews, reference  
12 checks, checks for records of sex offenses and other criminal  
13 records, information from the Department of Motor Vehicles, and  
14 other information that the Judicial Council deems appropriate.

15 SEC. 3. Section 304.7 of the Welfare and Institutions Code is  
16 amended to read:

17 304.7. (a) The Judicial Council shall develop and implement  
18 standards for the education and training of all judges who conduct  
19 hearings pursuant to Section 300. The training shall include, but  
20 not be limited to, both of the following:

21 (1) A component relating to Section 300 proceedings for newly  
22 appointed or elected judges and an annual training session in  
23 Section 300 proceedings.

24 (2) Cultural competency and sensitivity relating to, and best  
25 practices for, providing adequate care to lesbian, gay, bisexual,  
26 and transgender youth.

27 (b) Any commissioner or referee who is assigned to conduct  
28 hearings held pursuant to Section 300 shall meet the minimum  
29 standards for education and training established pursuant to  
30 subdivision (a), by July 31, 1998.

31 (c) The Judicial Council shall submit an annual report to the  
32 Legislature on compliance by judges, commissioners and referees  
33 with the education and training standards described in subdivisions  
34 (a) and (b).

35 SEC. 4. Section 317 of the Welfare and Institutions Code is  
36 amended to read:

37 317. (a) (1) When it appears to the court that a parent or  
38 guardian of the child desires counsel but is presently financially  
39 unable to afford and cannot for that reason employ counsel, the  
40 court may appoint counsel as provided in this section.

1 (2) When it appears to the court that a parent or Indian custodian  
2 in an Indian child custody proceeding desires counsel but is  
3 presently unable to afford and cannot for that reason employ  
4 counsel, the provisions of Section 1912(b) of Title 25 of the United  
5 States Code and Section 23.13 of Title 25 of the Code of Federal  
6 Regulations shall apply.

7 (b) When it appears to the court that a parent or guardian of the  
8 child is presently financially unable to afford and cannot for that  
9 reason employ counsel, and the child has been placed in  
10 out-of-home care, or the petitioning agency is recommending that  
11 the child be placed in out-of-home care, the court shall appoint  
12 counsel for the parent or guardian, unless the court finds that the  
13 parent or guardian has made a knowing and intelligent waiver of  
14 counsel as provided in this section.

15 (c) If a child or nonminor dependent is not represented by  
16 counsel, the court shall appoint counsel for the child or nonminor  
17 dependent, unless the court finds that the child or nonminor  
18 dependent would not benefit from the appointment of counsel. The  
19 court shall state on the record its reasons for that finding. A primary  
20 responsibility of counsel appointed to represent a child or nonminor  
21 dependent pursuant to this section shall be to advocate for the  
22 protection, safety, and physical and emotional well-being of the  
23 child or nonminor dependent. Counsel may be a district attorney,  
24 public defender, or other member of the bar, provided that he or  
25 she does not represent another party or county agency whose  
26 interests conflict with the child's or nonminor dependent's interests.  
27 The fact that the district attorney represents the child or nonminor  
28 dependent in a proceeding pursuant to Section 300 as well as  
29 conducts a criminal investigation or files a criminal complaint or  
30 information arising from the same or reasonably related set of facts  
31 as the proceeding pursuant to Section 300 is not in and of itself a  
32 conflict of interest. The court may fix the compensation for the  
33 services of appointed counsel. The appointed counsel shall have  
34 a caseload and training that ensures adequate representation of the  
35 child or nonminor dependent. The Judicial Council shall  
36 promulgate rules of court that establish caseload standards, training  
37 requirements, and guidelines for appointed counsel for children  
38 and shall adopt rules as required by Section 326.5 no later than  
39 July 1, 2001. ~~On and after January 1, 2014, those~~ *Those* training  
40 requirements shall include instruction on cultural competency and

1 sensitivity relating to, and best practices for, providing adequate  
2 care to lesbian, gay, bisexual, and transgender youth in out-of-home  
3 care.

4 (d) Counsel shall represent the parent, guardian, child, or  
5 nonminor dependent at the detention hearing and at all subsequent  
6 proceedings before the juvenile court. Counsel shall continue to  
7 represent the parent, guardian, child, or nonminor dependent unless  
8 relieved by the court upon the substitution of other counsel or for  
9 cause. The representation shall include representing the parent,  
10 guardian, or the child in termination proceedings and in those  
11 proceedings relating to the institution or setting aside of a legal  
12 guardianship. On and after January 1, 2012, in the case of a  
13 nonminor dependent, as described in subdivision (v) of Section  
14 11400, no representation by counsel shall be provided for a parent,  
15 unless the parent is receiving court-ordered family reunification  
16 services.

17 (e) (1) Counsel shall be charged in general with the  
18 representation of the child's interests. To that end, counsel shall  
19 make or cause to have made any further investigations that he or  
20 she deems in good faith to be reasonably necessary to ascertain  
21 the facts, including the interviewing of witnesses, and shall  
22 examine and cross-examine witnesses in both the adjudicatory and  
23 dispositional hearings. Counsel may also introduce and examine  
24 his or her own witnesses, make recommendations to the court  
25 concerning the child's welfare, and participate further in the  
26 proceedings to the degree necessary to adequately represent the  
27 child. When counsel is appointed to represent a nonminor  
28 dependent, counsel is charged with representing the wishes of the  
29 nonminor dependent except when advocating for those wishes  
30 conflicts with the protection or safety of the nonminor dependent.  
31 If the court finds that a nonminor dependent is not competent to  
32 direct counsel, the court shall appoint a guardian ad litem for the  
33 nonminor dependent.

34 (2) If the child is four years of age or older, counsel shall  
35 interview the child to determine the child's wishes and assess the  
36 child's well-being, and shall advise the court of the child's wishes.  
37 Counsel shall not advocate for the return of the child if, to the best  
38 of his or her knowledge, return of the child conflicts with the  
39 protection and safety of the child.

1 (3) Counsel shall investigate the interests of the child beyond  
2 the scope of the juvenile proceeding, and report to the court other  
3 interests of the child that may need to be protected by the institution  
4 of other administrative or judicial proceedings. Counsel  
5 representing a child in a dependency proceeding is not required to  
6 assume the responsibilities of a social worker, and is not expected  
7 to provide nonlegal services to the child.

8 (4) (A) At least once every year, if the list of educational  
9 liaisons is available on the Internet Web site for the State  
10 Department of Education, both of the following shall apply:

11 (i) Counsel shall provide his or her contact information to the  
12 educational liaison, as described in subdivision (b) of Section  
13 48853.5 of the Education Code, of each local educational agency  
14 serving counsel's foster child clients in the county of jurisdiction.

15 (ii) If counsel is part of a firm or organization representing foster  
16 children, the firm or organization may provide its contact  
17 information in lieu of contact information for the individual  
18 counsel. The firm or organization may designate a person or  
19 persons within the firm or organization to receive communications  
20 from educational liaisons.

21 (B) The child's caregiver or other person holding the right to  
22 make educational decisions for the child may provide the contact  
23 information of the child's attorney to the child's local educational  
24 agency.

25 (C) Counsel for the child and counsel's agent may, but are not  
26 required to, disclose to an individual who is being assessed for the  
27 possibility of placement pursuant to Section 361.3 the fact that the  
28 child is in custody, the alleged reasons that the child is in custody,  
29 and the projected likely date for the child's return home, placement  
30 for adoption, or legal guardianship. Nothing in this paragraph shall  
31 be construed to prohibit counsel from making other disclosures  
32 pursuant to this subdivision, as appropriate.

33 (5) Nothing in this subdivision shall be construed to permit  
34 counsel to violate a child's attorney-client privilege.

35 (6) The changes made to this subdivision during the 2011–12  
36 Regular Session of the Legislature by the act adding subparagraph  
37 (C) of paragraph (4) and paragraph (5) are declaratory of existing  
38 law.

39 (7) The court shall take whatever appropriate action is necessary  
40 to fully protect the interests of the child.

(f) Either the child or counsel for the child, with the informed consent of the child if the child is found by the court to be of sufficient age and maturity to consent, which shall be presumed, subject to rebuttal by clear and convincing evidence, if the child is over 12 years of age, may invoke the psychotherapist-client privilege, physician-patient privilege, and clergyman-penitent privilege. If the child invokes the privilege, counsel may not waive it, but if counsel invokes the privilege, the child may waive it. Counsel shall be the holder of these privileges if the child is found by the court not to be of sufficient age and maturity to consent. For the sole purpose of fulfilling his or her obligation to provide legal representation of the child, counsel shall have access to all records with regard to the child maintained by a health care facility, as defined in Section 1545 of the Penal Code, health care providers, as defined in Section 6146 of the Business and Professions Code, a physician and surgeon or other health practitioner, as defined in former Section 11165.8 of the Penal Code, as that section read on January 1, 2000, or a child care custodian, as defined in former Section 11165.7 of the Penal Code, as that section read on January 1, 2000. Notwithstanding any other law, counsel shall be given access to all records relevant to the case that are maintained by state or local public agencies. All information requested from a child protective agency regarding a child who is in protective custody, or from a child's guardian ad litem, shall be provided to the child's counsel within 30 days of the request.

(g) In a county of the third class, if counsel is to be provided to a child at the county's expense other than by counsel for the agency, the court shall first use the services of the public defender before appointing private counsel. Nothing in this subdivision shall be construed to require the appointment of the public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the public defender after making a finding of good cause and stating the reasons therefor on the record.

(h) In a county of the third class, if counsel is to be appointed to provide legal counsel for a parent or guardian at the county's expense, the court shall first use the services of the alternate public defender before appointing private counsel. Nothing in this subdivision shall be construed to require the appointment of the

1 alternate public defender in any case in which the public defender  
2 has a conflict of interest. In the interest of justice, a court may  
3 depart from that portion of the procedure requiring appointment  
4 of the alternate public defender after making a finding of good  
5 cause and stating the reasons therefor on the record.

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